SWEENEY | LAW FIRM
16 Keith Road, Delmar, New York 12054
www.mtsweeneylaw.com

Mark T. Sweeney, Esq.
p: (518) 461-6838
e: mark@mtsweeneylaw.com

May 18, 2026,

VIA EMAIL AND REGULAR MAIL
Town of Chatham Zoning Board of Appeals
488 State Route 295
Chatham, New York 12037
Attn: Hon. Daniel Persing, Chair

Re: Opposition to Request of Fox Hill Estate and Winery LLC for Rehearing

Dear Chair Persing:

I represent Jeffrey Murdock and Regina Wenzek, who reside at 209 Reed Road in the Town of Chatham. My clients strongly oppose the request of Fox Hill Estate and Winery LLC ("Fox Hill") for a rehearing as its purported basis of the request is incorrect and lacking in all respects.to include the Property

The Board Must Deny the Rehearing Request

In his letter dated April 13, 2026, Attorney Howard, requests the Chatham Zoning Board of Appeals ("Board") grant a rehearing for Fox Hill (the "Howard Letter") to again try to persuade the Board it should be entitled to operate an event venue for wine tastings and sales at the property owned by Edwin and Cherie Williams located at 509 Bashford Road in the Town of Chatham (the "Property"). More specifically, the Howard Letter relates to the Board's March 26, 2026 Determination in the Appeal of Susan Tanner finding that the proposed wine sales and tasting room/event venue holding that this activity to be a commercial retail operation and thus prohibited in the RL-2 district ("Tanner Determination").

Such requests are highly unusual and in no way take the place of a legal challenge to the Tanner Determination. For a request to hold a rehearing is permitted, a motion must be made by a member of the board and a unanimous vote of the board on said motion is required for such a rehearing to be authorized. N.Y. Town Law §267-a (12). We submit Fox Hill's request represents nothing more than an attempt to circumvent the Tanner Determination, that there are no "new" facts sufficient to warrant grant of this request, and the statute of limitations for Fox Hill to commence a proceeding challenging the Tanner Determination has expired.

The request should be denied as Howard Letter fails to present any new facts to warrant a rehearing but rather merely attempts to repackage the same facts previously before the Board. The main point relied upon for this request is the formal incorporation of the Williams' property

into an agricultural district by the NYS Dept. of Agriculture and Markets ("NYSDAM") that occurred after the Board's decision. While the Howard Letter characterizes the extension of the Columbia County Agricultural District 10 as "new" facts, this is false and a cursory review of the record in that prior appeal, belies the accuracy of this statement. It is clear that Fox Hill/Williams had applied for such an inclusion of their property into an agricultural district well before the March 26, 2026 resolution. In fact, the resolution acknowledges (i) the Board was aware of status of the Property as not being in a NYS agricultural district, (ii) the Columbia County Board of Supervisors had approved Fox Hill's request to be placed in an NYS agricultural district[1], and (iii) specifically stated that such status played no role in the Tanner Determination. Conspicuously absent from the Howard Letter is the fact that Board actually determined that the wine production, sales and marketing and operation of a tasting room to be "commercial retail activity", with full knowledge of the County's approval of the Property to be included in Agricultural District 10. Nothing about the proposed use of the Property has changed at all. As such, the request fails to identify "new facts" to sufficient warrant a rehearing.

In addition, the Howard Letter mischaracterizes the analysis of the Board in the Tanner Determination as entirely a result of a finding that the proposed wine tasting/event venue was not accessory to the primary residential use. Following inclusion of the Property in Agricultural District, Fox Hill asserts that this designation now makes "agriculture" a second primary use under the Town of Chatham Zoning Law[2]. As a result, Fox Hill argues the wine production, sales and operation of a tasting room is customarily incidental to that second primary use. Notably, the proposal to operate a tasting room must be contrasted to a farm stand or other means of selling crops or products from such crops are traditionally and customarily done in the RL-2 zoning district within the Town. In essence, as set forth in the Application, the proposal contemplates people making reservations and coming to the tasting room to consume and purchase wine produced from grapes grown on site ***and elsewhere***. Fox Hill admitted that it lacked sufficient capacity of grapes and production to support the proposal and acknowledges it is currently seeking a liquor license for this purpose. Again, the mere issuance of a liquor license, ***if*** that occurs, fails to affect the Town's Zoning in anyway. No evidence was provided from Fox Hill to establish other sales of crops or products from such crops in the Town, particularly in the RL-2 district, require liquor licenses nor involve a drinking establishment. The application also refers to the food service to complement the wine in the tasting room. It is clear that this is a commercial enterprise in the exact vein of a commercial retail activity as determined by the Board. As such, whether the proposal is customary and incidental to an agricultural use is irrelevant to the rehearing request. It seems Fox Hill maintains a small amount of plants to support and justify a larger and incompatible commercial retail use. In reality, however, the facts as presented to the Board at all times plainly demonstrate that such minor agricultural activity is actually subordinate and incidental to the true nature of the proposed use.

---

[1] On or about February 11, 2026, the Columbia County Board of Supervisors adopted a resolution approving the inclusion of the Property in Agricultural District 10.

[2] It is well settled that AML Article 25-AA does not change any zoning laws but rather only seeks to prevent unreasonable restriction of agricultural activity.

The Board Did Not Unreasonably Restrict Fox Hill's Agricultural Use

The Howard Letter next seeks to cloak the activity in protection arising under N.Y. Agricultural and Markets Law ("AML") Article 25-AA which preempts local laws that unreasonably restrict a farm operation. Contrary to this assertion, it is well settled that not all agricultural activities arising from a parcel within an agricultural district qualify for such protection. Recently, the Court in the *Matter of City of New York v. Ball*, 2026 NY Slip Opinion 01426 (3d Dept 2026) stated that:

> [t]he Legislature …clearly expressed its intent that the AML §305-a preempt those local laws that result in direct and unreasonable restrictions or regulations upon farming operations and associated use of land – not the sale of products produced as a result of those farm operations in retail food and food service establishments. (*Matter of City of New York v. Ball*, 2026 NY Slip Opinion 01426 at p. 4).

The Court reviewed the legislative history for the enaction of AML Article 25-AA and noted the protections being afforded arose from concerns over the loss of agricultural lands in the state due to local land use regulations inhibiting farming. *Id*. at p. 3. In analyzing whether the restriction in that case was unreasonable, the Court balanced the preemption of AML §305-a with New York's strong history of home rule and found nothing indicated the Legislature granted nor intended to grant the Commissioner the power over all local government lawmaking when any agricultural district in the state is affected or where the only impact upon farming operations is indirect and financial in nature. *Id*. at p. 5. Based on this analysis, the Court held that the local law prohibiting the sale of foie gras produced in an agricultural district was not preempted by AML §305-a as it did not unreasonably restrict the farming operation. *Id*. at pp. 5-6.

Here, nothing in the Tanner Determination limits the use of the Property for the production of crops (e.g., grapes) or other crops. Nor does it affect Fox Hill's vineyard operation or ability to maintain and even expand its vineyard at the Property. Notably, Fox Hill could produce and sell its wine at another location in Chatham or elsewhere where such use is permitted[3]. This determination simply limits the manufacturing, bottling and sales of wine and operation of a tasting room ***on the Property***. At best, the impact of this determination on the farming operation is indirect to the agricultural use and wholly financial in nature and, therefore, is not an unreasonable restriction of a farm operation. As such, the prohibition against the sale of wine and operation of a tasting room for individual sales and hosting of events is consistent with the Court's limitations establishing limits on the preemption of local enforcement of its land use regulations under AML Article 25-AA.

[3] At the January 22, 2026 Board hearing, Ryan Loucks, the engineer for Fox Hill, stated that Fox Hill was applying for liquor license from NYS Liquor Authority to sell wine at the Property and planned to move production off-site in the future.

The Board Should Not Act Upon The Rehearing Request

In reality, Fox Hill seeks to have the Board permit another bite at the apple following the Tannrer Determination. Based on the foregoing, the Howard Letter does not actually raise any new facts justifying the Board granting a rehearing request. Nor does the request demonstrate the Board's decision unreasonably restricts the agricultural use of the Property. Accordingly, there is no compelling reason under NY Town Law §267-a (12) nor AGM Article 25-AA for this Board to do so.

Thank you for your consideration.

Respectfully submitted,

Mark T. Sweeney, Esq.

Cc: Town of Chatham Zoning Board of Appeals Members
Trish Fallon, Chatham Zoning Board of Appeals Clerk
Jeffrey Murdock
Regina Wenzek